stock. As this is, in most instances, constantly moving from State to State, it has no actual situs, and if it is to be taxed at all, some fictitious situs must be assigned to it for that purpose. In Indiana the legislature at one time treated rolling stock as real estate, and taxed it accordingly, *Railroad* v. *State* (1865) 25 Ind. 177. Some States, considering it personal property, have applied the old maxim mobilia sequuntur personam, and have taxed a railroad for its entire rolling stock at its principal office, whether the railroad lies wholly within the State, *Detroit* v. *Wayne, Circuit Judge* (1901) 127 Mich. 604; *Railroad* v. *City Council of Alexandria* (Va. 1867) 17 Gratt. 176; see note in 56 Am. Dec. 523, 535, or is an interstate road. *Railroad* v. *Morgan Co.* (1852) 14 Ill. 163; *Appeal Tax Court* v. *Railroad* (1878) 50 Md. 417. Other States have assigned to it a different fictitious situs and tax such proportion of the total rolling stock of a railroad, as the mileage over which it operates in the State, or in each county, bears to the total mileage. *Railroad* v. *Backus* (1892) 133 Ind. 625; *Pullman's Car Co.* v. *Pa.* supra. Or have taxed the average number of cars in the State during the period of taxation. *American Refrigerator Transit Co.* v. *Hall* (1899) 174 U. S. 70.

These conflicting theories were simplified by the decision of the Supreme Court in *D. L. and W. R. R.* v. *Pa.* (1905) 199 U. S. 341, which held that a statute specifically taxing a domestic corporation at its principal office for tangible personal property (coal) permanently located without the State, was a taking of property without due process and unconstitutional. In a recent case the same court has reaffirmed this principle, and applying it to rolling stock, has held that a State can tax a car company only for such portion of its rolling stock as is used within the State, and that the proper method of ascertaining this is the one sustained in *Pullman's Car Co.* v. *Pa.* supra; *Union Refrigerator Transit Co.* v. *Ky.* (1905) 26 Sup. Ct. 36. These cases mark the extinction of the maxim mobilia sequuntur personam in the taxation of tangible personal property situated in a different State from the owner's domicile. They apply to this species of property the simple, just rule taxing it, like realty, only at its situs. If it has no actual situs, as in the case of rolling stock, then the fiction of averages, the nearest approximation to actual situs, controls. They remove the possibility of double taxation of tangible personalty. Intangible personalty, alone, still remains subject to double taxation, unless the case of *Goodsite* v. *Lane*, 6 COLUMBIA LAW REVIEW, 127, shows a tendency toward a doctrine similar to that of the principal case.

PRIVILEGED COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT.—The rule recognizing the privilege in communications between attorney and client was sedulously guarded at common law and confined originally to statements made to members of the legal profession in regard to the bringing or defending of a suit, *Williams*

v. *Mudil* (1824) 1 Carr. & Pay. 158; *Cobden* v. *Kendrick* (1791) 4 Term Rep. 431. While communications made to attorneys through an agent, *Parkins* v. *Hankshaw* (1817) 2 Stark. Rep. 239, or an attorney's clerk, *Taylor* v. *Foster* (1825) 2 Carr. & Pay. 195, or an interpreter, *Du Barre* v. *Lwette* (1791) Peake's Rep. 78, were within the rule, the privilege did not attach unless the attorney was proved to be such, even though the party making the communication believed him so to be. *Fountain* v. *Young* (1807) 6 Esp. Rep. 113. It may now be regarded as settled that the old restriction of the privilege to statements made in regard to the bringing or defending of a suit when the attorney is retained, is denied and any communication from a client seeking advice to an attorney within the line of his profession, is privileged. *Foster* v. *Hall* (1831) 12 Pick. 89; *Bank of Utica* v. *Messereau* (1848) 3 Barb. Ch. 595. This is true irrespective of whether or not any fee was paid or the employment ultimately accepted by the attorney. *Cross* v. *Riggins* (1872) 50 Mo. 235; *State* v. *Tally* (1894) 102 Ala. 25; see also *Cromack* v. *Heathcote* (1820) 2 Brod. & Bing. 4. It is the motive of the party who makes the statement and the character of the party who hears it that makes it privileged. *Bacon* v. *Frisbie* (1878) 15 Hun, 26.

A recent case in California has raised the point of the creation of the relation of attorney and client under an interesting state of facts. The prosecution in a murder trial sought to impeach the testimony of defendant's wife by introducing evidence of statements made by her to an attorney whom she had endeavored to retain as counsel for her husband. The defendant objected on the ground that the wife's communications were privileged as to him within the provisions of the Code forbidding the disclosure of communications by the attorney without the client's consent. The court held the inhibition did not extend to the present case because there was here no retainer and the statements purported to come from the wife's own knowledge and not from the defendant. *People* v. *Hart* (1905) 81 Pac. 1018. While the question of agency was not raised in the principal case, it would seem that the defendant was entitled to the protection of the rule in this instance, even under the narrow application made by the older authorities. Statements made to an attorney by an agent or through the intervention of a third party were as much a matter of privilege as those made directly. *Walker* v. *Wildman* (1821) 6 Maddock 47; *Carpmael* v. *Powis* (1846) 1 Phill. Ch. 686. Clearly the wife in soliciting counsel was acting in behalf of her husband and consulting with regard to his rights, and it is difficult to see how the situation was altered by the fact that she may have made statements of her own knowledge and belief. In such a case the privilege is not the agent's, but the client's, for if his consent is given the attorney may testify although the agent object. *Bingham* v. *Walk* (1890) 128 Ind. 164. It is impossible to support the conclusion of the California court on this basis.

Considering the wife herself as the client in the case, the ques-

tion is presented as to the extent to which a third party may avail himself of the privilege. The consent of the client being conclusive, such a question could properly arise only where the client is absent, dead, or where, though present and objecting, the evidence is used against a third party only. This will be answered according to the court's theory as to the foundation of the rule. Those jurisdictions which regard the privilege as a purely personal one, analogous to a witness's right to refuse to answer incriminating questions, refuse to allow a third person to raise the privilege. *Merle* v. *Moore* (1826) 2 Carr. & Pay. 275; *Dowie's Estate* (1890) 135 Pa. St. 210; *McCooe* v. *R. R.* (1899) 173 Mass. 117. On the other hand, it has frequently been considered that the rule is founded on principles of public policy, and that for the better administration of justice the confidence of the client should be protected, if necessary, by the court on its own motion. *People* v. *Atkinson* (1870) 40 Cal. 284. If a man must rely on his legal remedies for a breach of the privilege he may be deterred from consulting an attorney, or at least induced to withhold from the latter's knowledge the full and complete facts necessary to a proper understanding of the case. *Bacon* v. *Frisbie* (1880) 80 N. Y. 394. Since the confidence is betrayed, these principles are as much violated by a disclosure in the party's absence as in his presence. *Rex* v. *Withers* (1811) 2 Campbell 578; *State* v. *Barrows* (1884) 52 Conn. 323, and this result is not changed by the fact that the evidence is to be used against a third party only.

LEGISLATIVE CONTROL OVER CORPORATIONS UNDER THE POLICE POWER AND UNDER THE RESERVED POWER TO AMEND.—A recent decision in the Federal Supreme Court, together with a dictum in the Supreme Court of New York, present the question of the extent of legislative control of corporations under the police power and under the reserved power to alter or repeal. An Act of Congress requiring the Union Pacific to permit all railroads entering Omaha to use its bridge across the Missouri River was held constitutional in language applicable either to the police power or the power to alter or repeal reserved in the charter. *Union Pacific R.R.* v. *Mason City & F. D. R.R.* (1905) 26 Sup. Ct. 19. In New York the Appellate Division of the Supreme Court in deciding an act restraining the freedom of contract, unconstitutional as applied to individual employers, suggested that it might be valid as to corporations by virtue of the power to alter or repeal. *State* v. *Marcus* (1905) N. Y. Law J. xxxiv. 81. In the former case the powers apparently were regarded as coinciding, in the latter the police power is considered the narrower.

The police power in its larger sense is the power of the legislature to reasonably regulate, in the promotion of the general welfare, the internal affairs of the State. *People* v. *Budd* (1889) 117 N. Y. 1. From the field of the health, safety, and morality, which comprises the narrower definition, the power extends to embrace affairs affect-